COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 034620-96**
Michael P. Rossetti	Employee
City of Boston School Dept.	Employer
City of Boston	Self-insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Carroll and Costigan)

APPEARANCES
Michael J. Powell, Jr., Esq., for the employee
John T. Walsh, Esq. and Susan M. Saucier, Esq., for the self-insurer

MCCARTHY, J. Mr. Rossetti suffered a myocardial infarction while working a double shift as a custodian for the Boston Public School System on August 19, 1996. The self-insurer accepted liability for the injury; treatment included angioplasty. The employee returned to work for several months, but then stopped on June 25, 1997. (Dec. 3-4.)

The employee made claim for permanent and total incapacity benefits under § 34A from April 16, 2000. Following a conference, an administrative judge awarded ongoing partial incapacity benefits under § 35 starting November 14, 2000. Cross appeals brought the parties to a full evidentiary hearing. (Dec. 2.)

The only medical evidence in the case was the report and an addendum of the § 11A physician, Dr. B. D. Gupta. Dr. Gupta opined that the employee's work-related myocardial infarction was a major cause of the medical disability he suffered, but that he could return to a sedentary work environment. (Dec. 4-5.)

The judge concluded:

> In the present case the employee credibly testified of his inability to perform the job even with minimum lifting restrictions. The employee demonstrated a strong desire to work full-time and indeed, attempted to work but was prevented due to

> recurrent chest pains. The 11A [physician] too concedes in his addendum to the initial report that "work-related myocardial infarction is indeed a major cause of any disability."
> I find that [the employee] has met his burden of showing that he is totally disabled.

(Dec. 6.) The judge awarded § 34A benefits, "[b]ased upon the employee's education, training, age and experience as well as the restrictions placed upon him as a result of his medical condition, and his credible testimony . . . ." (Dec. 7.)

The self-insurer argues on appeal that the decision lacks a proper foundation – medical evidence, subsidiary findings of fact and vocational analysis – for the award of benefits. While the medical evidence might support a § 34A award, it certainly cannot in the absence of a proper vocational analysis under Scheffler's Case, 419 Mass. 251, 256 (1994). We agree with the self-insurer that the judge merely recited the vocational factors of age, education, training and experience, rather than making any findings addressing them. (Dec. 7.) See Griffin v. State Lottery Comm'n, 14 Mass. Worker's Comp. Rep. 347, 349 (2000)("It is not enough that a judge merely incant the vocational factors enunciated in Frennier's Case, 318 Mass. 635, 639 (1945) and Scheffler's Case, [supra]. The judge must make findings addressing these factors"). The several findings made on the employee's age (68 at hearing), military background (13 years in the National Guard), and work experience (working "in various capacities for Salvi Sportswear for 37 years" and as a custodian for approximately 10 years), do not adequately address the essential question as to whether the employee has a sedentary work capacity. The employee cannot return to the work of a custodian with the school department, because it required heavy lifting and substantial standing and walking. (Dec. 3.) Nonetheless, the lack of capacity to return to the former employment, standing alone, by no means equates with permanent and total incapacity. Kakamfo v. Hillhaven West Roxbury Manor Nursing Home, 14 Mass. Workers' Comp. Rep. 195, 198 (2000). The decision before us simply does not fulfill the legal requirements of G. L. c. 152, § 11B, namely, "a brief statement of the grounds for each . . . decision" on each issue in controversy. See Scheffler, supra at 258 (decisions must have "adequate evidentiary and

factual support and disclos[e] reasoned decision making within the particular requirements governing a workers' compensation dispute"); Saxon Coffee Shop, Inc. v. Boston Licensing Bd., 380 Mass. 919, 929 (1980)(judge must not only make subsidiary findings of fact but also state reasons for progressing from subsidiary facts to ultimate decision).

This is an appropriate case to recommit to the administrative judge for further findings of fact (§ 11C) because the decision fails to adhere to the requirements of the act and Scheffler's Case, supra. We transfer the case to the senior judge for reassignment to the hearing judge for further findings of fact and to file his decision anew.

So ordered.

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William A. McCarthy
Administrative Law Judge

Filed: ***May 20, 2004***

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge